

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:21-cv-35-RJC
3:18-cr-162-RJC-DSC-1**

DANIEL BOYD MCCRACKEN,)	
)	
Petitioner,)	
)	
vs.)	
)	
UNITED STATES OF AMERICA,)	<u>ORDER</u>
)	
Respondent.)	
<hr/>)	

THIS MATTER is before the Court on Petitioner’s *pro se* Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct a Sentence by a Person in Federal Custody, (Doc. No. 1).

Petitioner pleaded guilty in the underlying criminal case to a single count of conspiracy to distribute and possess with intent to distribute at least 50 grams of methamphetamine actual for which he was sentenced to 162 months’ imprisonment followed by five years of supervised release. (3:18-cv-162 (“CR”) Doc. No. 47). The Judgment was entered on February 7, 2020. Petitioner did not appeal.

The instant § 2255 Motion to Vacate was docketed on January 22, 2021.¹ Petitioner asserts claims of ineffective assistance of trial counsel and seeks resentencing. However, the § 2255 Motion to Vacate is not verified (signed under penalty of perjury). See Rule 2(b)(5), 28 U.S.C. foll. § 2255; 28 U.S.C. § 1746. Petitioner shall, within **14 days** of this Order, verify the § 2255 Motion to Vacate, (Doc. No. 1), using the Verification of Motion to Vacate form supplied with this Order. Petitioner is cautioned that failure to comply with this Order will likely result in the


¹ Petitioner failed to declare the date upon which he submitted the § 2255 Motion to Vacate to prison authorities for mailing. See Rule 3(d), 28 U.S.C. foll. § 2255 (addressing inmate filing).

dismissal of this case without further notice.

IT IS, THEREFORE, ORDERED that:

1. Petitioner shall, within **14 days** of this Order, verify the Motion to Vacate, (Doc. No. 1), using the Verification of Motion to Vacate form attached to this Order. Petitioner is cautioned that failure to comply with this Order will likely result in this case's dismissal without further notice.
2. The Clerk of Court is instructed to mail a copy of this Order and the attached Verification of Motion to Vacate to Petitioner.

Signed: February 3, 2021


Robert J. Conrad, Jr.
United States District Judge



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DANIEL BOYD MCCracken,)	
)	
Petitioner,)	
vs.)	<u>VERIFICATION OF</u>
)	<u>MOTION TO VACATE</u>
UNITED STATES OF AMERICA,)	
)	
Respondent.)	
_____)	

Pursuant to Rule 2(b)(5) of the Rules Governing § 2255 Proceedings, I declare (or certify, verify, or state) under penalty of perjury that the § 2255 Motion to Vacate, (Doc. No. 1), which I failed to verify, is true and correct.

Daniel Boyd McCracken

Executed on (Date)